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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/069,448	08/07/2002	Lilian Fuchshuber	468452000200	1448	
75	7590 11/04/2003			EXAMINER	
JOSEPH R. SNYDER, ESQ. TOWNSEND AND TOWNSEND AND CREW, LLP 2175 NORTH CALIFORNIA BLVD, SUITE 625			VENKAT, JYOTHSNA A		
			ART UNIT	PAPER NUMBER	
WALNUT CREEK, CA 94596			1615		
			DATE MAILED: 11/04/2003	10	

Please find below and/or attached an Office communication concerning this application or proceeding.

<u> </u>					
	Application No.	Applicant(s)			
<u> </u>	10/069,448	FUCHSHUBER ET AL.			
Office Action Summary	Examiner	Art Unit			
Tile copy	JYOTHSNA A VENKAT	1615			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply					
A SHORTENED STATUTORY PERIOD FOR REPL THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.7 after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a rep - If NO period for reply is specified above, the maximum statutory period - Failure to reply within the set or extended period for reply will, by statute - Any reply received by the Office later than three months after the mailin earned patent term adjustment. See 37 CFR 1.704(b).  Status	136(a). In no event, however, may a reply be ly within the statutory minimum of thirty (30) owill apply and will expire SIX (6) MONTHS from the cause the application to become ABANDO	timely filed days will be considered timely. om the mailing date of this communication. NED (35 U.S.C. § 133).			
1) Responsive to communication(s) filed on <u>07</u>	August 2002 .				
2a) This action is <b>FINAL</b> . 2b) ⊠ Th	nis action is non-final.				
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims  AND Claim(s) 1.10 is/ore pending in the application	n				
4) Claim(s) 1-10 is/are pending in the application.					
4a) Of the above claim(s) is/are withdrawn from consideration.					
5) Claim(s) is/are allowed.					
6)⊠ Claim(s) <u>1-10</u> is/are rejected. 7)□ Claim(s) is/are objected to.					
8) Claim(s) are subject to restriction and/o	or election requirement				
Application Papers					
9) The specification is objected to by the Examiner.					
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.					
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).					
11) The proposed drawing correction filed on	_ is: a)□ approved b)□ disapp	proved by the Examiner.			
If approved, corrected drawings are required in reply to this Office action.					
12)☐ The oath or declaration is objected to by the Examiner.					
Priority under 35 U.S.C. §§ 119 and 120					
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).					
a) ☐ All b) ☐ Some * c) ☐ None of:					
1. Certified copies of the priority document	ts have been received.				
2. Certified copies of the priority document	ts have been received in Applica	ation No			
3.  Copies of the certified copies of the prio application from the International Bu  * See the attached detailed Office action for a list	ureau (PCT Rule 17.2(a)).	-			
14) ☐ Acknowledgment is made of a claim for domest	ic priority under 35 U.S.C. § 119	9(e) (to a provisional application).			
a)  The translation of the foreign language pro	• •				
Attachment(s)					
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3	5) Notice of Informa	ary (PTO-413) Paper No(s) al Patent Application (PTO-152)			

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#### **DETAILED ACTION**

Receipt is acknowledged of priority document, IDS, preliminary amendment, 2<sup>nd</sup> preliminary amendment, and request for withdrawal of attorneys filed on 10/24/01, 8/7/02 and 5/29/03. The preliminary amendment canceled claim 11. Claims 1-10 are pending in the application and the status of the application is as follows;

# Claim Rejections - 35 USC § 112

- 1. The following is a quotation of the second paragraph of 35 U.S.C. 112:
  - The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
- 2. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of "molecular weight "in claim 6 is indefinite. There are different kinds of "molecular weights". Most common are number average and weight average molecular weights. The others are peak average, viscosity average and Z average molecular weights. Polymers are made of many molecular chains, each having different chain lengths and thus different molecular weights. Recourse to the specification does not identify the type of "molecular weight" for polyethylene glycol.

## Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1, 4-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,866, 152('152).

5. See col.2, lines 15-31 for polyethylene glycol(PEG) which reads on the claimed organic bulking agent. Since the bulking agent is same, claim 4 is inherent. See examples for claim 7. see col.2, lines 36-46 for claim 8. The specification does not define the meaning of "condition" and it is the examiners position that the patent, which discloses shampoo for the control of ectoparasites reads on the term "condition".

## Claim Rejections - 35 USC § 103

- 6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
- 8. Claims 2-3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of U. S. Patent '152 and WO 87/04617('6170 AND U. S. Patent 6,207, 694('694).

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The patent '512 does not teach the limitations of claims 2-3 wherein the concentration of the bulking agent is greater than 20% or greater than 50% nor the pharmaceutically active agent as antifungal agents of claim 9. However the WO document teaches the concentration of the bulking agent PEG as 40-80%. The patent '694 teaches antidandruff compositions using the antifungal agent at the paragraph bridging cols. 2-3.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare compositions of '152 and increase the concentration of the PEG of the patent to greater than 20% and combine with anti fungal agent for the control of dermal infection. The motivation to use higher concentration of PEG stems from the teaching of WO document that at higher concentration the PEG can dissolve the active ingredients so that better fungicidal properties are exhibited and the PEG also acts as penetration enhancer. This is a prima facie case of obvious ness.

9. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A VENKAT whose telephone number is 703-308-2439. The examiner can normally be reached on Monday-Thursday, 9:30-7:30:1st and 2nd Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN K PAGE can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is 703-308-1235.

YOTHSNA A YENKAT

Primary Examiner

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